

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSE PEDROZA, individually and on behalf
of all others similarly situated,

Plaintiff,

V.

REVENUEWIRE, INC. d/b/a SAFECART, a Washington corporation; and PARETOLOGIC, INC., a Canadian corporation,

Defendants.

No. 2:12-cv-00183-MJP

JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26 and the Court’s Scheduling Order in this matter, Plaintiff Jose Pedroza (“Pedroza”), and Defendants RevenueWire, Inc. (“RevenueWire”) and ParetoLogic, Inc. (“ParetoLogic”) (collectively, the “Parties”), hereby jointly submit the following Joint Status Report and Discovery Plan.

1. Nature and Complexity of the Case: Plaintiff Pedroza alleges, individually and on behalf of a nationwide class of similarly situated individuals and entities, that Defendants uniformly mislead and defraud consumers into purchasing ParetoLogic's RegCure computer software. According to the Complaint, Defendants represent to consumers that RegCure is capable of identifying, reporting and repairing a wide range of PC errors, privacy threats, and other computer problems when, in fact, it is not. To demonstrate RegCure's purported value to consumers, Defendants offer free downloads of the software that allow consumers to run

1 “diagnostic scans” to detect whether any problems exist on their computers. Regardless of the
 2 actual condition of the user’s computer, however, the scans invariably detect and report that
 3 numerous harmful errors and other threats are present. In order to repair those purported errors
 4 and threats, however, Defendants require consumers to purchase the full version of the software
 5 from RevenueWire—an authorized reseller of the software in the United States. Defendants deny
 6 these allegations in their entirety.

7 Plaintiff asserts causes of action on behalf of himself and a class of similarly situated
 8 individuals and entities for Defendants’ violations of Washington’s Consumer Protection Act,
 9 breach of express warranties, breach of the implied warranty of merchantability, fraud in the
 10 inducement, conspiracy to commit fraud in the inducement, negligence (in the alternative to
 11 fraud in the inducement and conspiracy to commit fraud in the inducement), breach of contract,
 12 and unjust enrichment (in the alternative to breach of contract).

13 Defendants have not asserted any counterclaims against Plaintiff Pedroza, nor have they
 14 asserted any cross-claims or third-party claims. Defendants deny all liability for the alleged acts
 15 and anticipate raising affirmative defenses to each of Plaintiff’s claims.

16 **2. ADR Method and Timing:** The Parties conducted a telephonic conference on April 2,
 17 2012, concerning settlement and/or ADR in conjunction with their Rule 26(f) conference.

18 The Parties are willing to discuss the resolution of this matter and are prepared to do so in
 19 private or court-sponsored mediation.

20 **3. Deadline for Joinder of Additional Parties:** The Parties propose that they be required
 21 to name additional parties (if any) no later than three (3) months following the Court’s entry of a
 22 scheduling order.

23 **4. Discovery:**

24 **a. Discovery conference and initial disclosures:** The Parties conducted a
 25 telephonic meet and confer pursuant to Fed. R. Civ. P. 26(f) on April 2, 2012. Recognizing that
 26 the Court ordered initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) to be made by April 9,
 27 2012, the Parties discussed that the deadline was impractical for Defendants due to counsel’s

1 schedule and agreed to make their respective initial disclosures no later than April 23, 2012. The
 2 Parties respectfully request that the Court so acknowledge and order.

3 **b. Subjects of anticipated discovery:** The Parties agree that there is no need for
 4 phasing discovery at this time.

5 Plaintiff anticipates taking discovery on the following non-exhaustive list of topics: (1)
 6 the total number of individuals and entities who purchased any and all full versions of the
 7 RegCure software; (2) the number and nature of consumer complaints regarding the RegCure
 8 software; (3) the number and amount of refunds requested and received by the members of the
 9 putative class related to their purchases of the RegCure software; (4) Defendants' representations
 10 regarding the purpose, utility and effectiveness of the RegCure software; (5) the source code
 11 underlying the RegCure software and its functionality; and, (6) the metrics (and the bases of
 12 those metrics) used by the RegCure software to assess and report the health and security status of
 13 users' computers.

14 Defendants anticipate taking discovery on the following non-exhaustive list of topics: (1)
 15 information and documents relating to the named Plaintiff's interactions with the Defendants; (2)
 16 information and documents relating to the named Plaintiff's purchase of any products from the
 17 Defendants; (3) information and documents relating to Defendants' anticipated opposition to
 18 Plaintiff's Motion for Class Certification; and (4) the allegations contained in the complaint.

19 **c. Limitations or modifications to the discovery rules:** The Parties agree that no
 20 limitations or modifications to the discovery contemplated by the Federal Rules of Civil
 21 Procedure are necessary at this time.

22 **d. Discovery management:** The Parties agree to cooperate and take all possible
 23 steps to streamline the discovery process, including attempting to engage in informal discovery.

24 **e. Other orders:** At this time, the Parties do not require any orders under
 25 Local Rules CR 16(b) and (c). The Parties do, however, anticipate moving the Court for the entry
 26 of an appropriate protective order. The Parties will also attempt to craft an appropriate stipulation
 27 governing the production of electronic evidence for the Court's approval.

1 **6. Discovery Completion Dates:** The Parties propose that all discovery be completed no
2 later than ten (10) months following the Court's entry of a scheduling order.

3 **7. Consent to Magistrate Judge:** The Parties respectfully decline to proceed before a
4 Magistrate Judge for all purposes in this action.

5 **8. Bifurcation:** The Parties agree that this case should not be bifurcated as between liability
6 and damages. However, the Defendants reserve the right to request that the Court bifurcate this
7 action at a later time.

8 **9. Pretrial Statements and Pretrial Order:** At this time, the Parties do not agree to forego
9 the pretrial statements and pretrial order contemplated by Local Rules CR 16(e), (h), (i), and (l),
10 and 16.1.

11 **10. Simplifying the Trial:** At this time, the Parties are unaware of any other matters that
12 may facilitate the just, speedy, and inexpensive disposition of this action.

13 **11. Ready for Trial:** The Parties expect to be prepared for trial by September 1, 2013.

14 **12. Jury Trial:** Plaintiff Pedroza has requested a trial by jury of all matters that can be so
15 tried.

16 **13. Length of Trial:** The Parties anticipate that a trial in this matter will require
17 approximately five (5) days.

18 **14. Trial Counsel:**

19 *For Plaintiff Jose Pedroza:*

20 EDELSON MC GUIRE, LLC

21 Jay Edelson (admitted *pro hac vice*)

22 Rafey S. Balabanian (admitted *pro hac vice*)

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No. 2:12-cv-00183-MJP

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15. **Service of Process:** All Defendants have been served.

16. **Scheduling Conference:** The Parties do not require a scheduling conference at this time.

* * *

Respectfully submitted,

JOSE PEDROZA, individually and on behalf of all
others similarly situated,

By: /s/ Rafey S. Balabanian
One of Plaintiff's Attorneys

Dated: April 16, 2012

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9 **REVENUEWIRE, INC. and PARETOLOGIC,
10 INC.,**

11 Dated: April 16, 2012

12 By: /s/ Erin M. Wilson
13 One of Defendants' Attorneys

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CERTIFICATE OF SERVICE

I, Rafey S. Balabanian, an attorney, hereby certify that on April 16, 2012, I served the above and foregoing ***Joint Status Report and Discovery Plan***, by causing true and accurate copies of such paper to be filed and served on all counsel of record via the Court's CM/ECF electronic filing system, on this the 16th day of April, 2012.

/s/ Rafey S. Balabanian